

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 CORNELE A. OVERSTREET,

5 Plaintiff,

6 v.

7 APEX LINEN SERVICE, INC.,

8 Defendant.  
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Case No. 2:17-cv-02923-APG-CWH

**ORDER DENYING MOTION TO STAY  
PENDING APPEAL AND INDICATIVE  
RULING**

10 Defendant Apex Linen Service, Inc. moves for a stay pending appeal of the portion of my  
11 preliminary injunction order (ECF No. 31) requiring Apex to offer reinstatement to three  
12 terminated employees: Adam Arellano, Charles Walker, and Joseph Servin. ECF No. 41. In  
13 Apex's reply, it provided new information to which petitioner Cornele Overstreet had not had the  
14 opportunity to respond. I therefore granted Overstreet leave to file a supplemental brief to  
15 address this new evidence about Servin. I also directed the parties to address whether I have  
16 jurisdiction to entertain the motion to stay, given that it seeks to alter an injunction that Apex has  
17 appealed.

18 While a preliminary injunction is pending on appeal, "a district court lacks jurisdiction to  
19 modify the injunction in such manner as to finally adjudicate substantial rights directly involved  
20 in the appeal." *A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1099 (9th Cir. 2002)  
21 (quotation omitted); *see also Townley v. Miller*, 693 F.3d 1041, 1042 (9th Cir. 2012) (stating the  
22 filing of a notice of appeal generally divests the district court of jurisdiction over the preliminary  
23 injunction being appealed). Federal Rule of Civil Procedure 62(c) provides an exception. Under  
24 that Rule, "[w]hile an appeal is pending from an interlocutory order or final judgment that grants,  
25 dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction  
26 on terms for bond or other terms that secure the opposing party's rights." The Ninth Circuit has  
27 interpreted this to mean the district court may "continue supervising compliance with the  
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1 injunction.” *A&M Records, Inc.*, 284 F.3d at 1099. Thus, Rule 62(c) “grants the district court no  
2 broader power than it has always inherently possessed to preserve the status quo during the  
3 pendency of an appeal,” but “it does not restore jurisdiction to the district court to adjudicate  
4 anew the merits of the case.” *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166  
5 (9th Cir. 2001) (quotation omitted). Any action taken under Rule 62(c) “may not materially alter  
6 the status of the case on appeal.” *Id.* (quotation omitted); *see also Small v. Operative Plasterers’*  
7 *& Cement Masons’ Int’l Ass’n Local 200, AFL-CIO*, 611 F.3d 483, 495 (9th Cir. 2010) (“Though  
8 the court is allowed to modify . . . an injunction on . . . terms that secure the opposing party’s  
9 rights, . . . the court only retains jurisdiction during the pendency of an appeal to act to preserve  
10 the status quo.” (quotations and internal citation omitted)). Meanwhile, Federal Rule of Appellate  
11 Procedure 8(a) provides that “ordinarily” a party must first move the district court for a stay  
12 pending appeal or for an order suspending or modifying an injunction while an appeal is pending  
13 before requesting a stay in the circuit court.

14 Here, the entirety of the case in this court is Overstreet’s application for a § 10(j)  
15 injunction. Consequently, a stay of that injunction, even in part, would constitute finally  
16 adjudicating the parties’ rights directly involved in the appeal, would materially change the status  
17 of the case on appeal, and would alter the status quo. I therefore conclude I lack jurisdiction to  
18 alter the injunction previously entered, so I will not stay the injunction’s requirement that Apex  
19 reinstate the three terminated employees.

20 However, under Federal Rule of Civil Procedure 62.1(a)(3), “[i]f a timely motion is made  
21 for relief that the court lacks authority to grant because of an appeal that has been docketed and is  
22 pending, the court may . . . state either that it would grant the motion if the court of appeals  
23 remands for that purpose or that the motion raises a substantial issue.” Apex’s reply brief offers  
24 new evidence that was not before me when I entered the injunction, nor has it been presented to  
25 the Administrative Law Judge (ALJ). Apex indicates it is going to move to reopen the  
26 proceedings before the ALJ to supplement the record with this new evidence. This new evidence  
27 raises substantial issues regarding whether, if it was presented to the ALJ, it would alter the  
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1 evaluation of Overstreet's likelihood of success on the merits regarding Servin's termination. It  
2 also raises substantial issues regarding the balance of factors in awarding injunctive relief  
3 regarding Servin's reinstatement. This evidence does not impact my decision related to the other  
4 terminated employees, Arellano and Walker.

5 IT IS THEREFORE ORDERED that defendant Apex Linen Service, Inc.'s motion to stay  
6 **(ECF No. 41) is DENIED** because I lack jurisdiction to consider it.

7 IT IS FURTHER ORDERED that pursuant to Federal Rule of Civil Procedure 62.1(b),  
8 defendant Apex Linen Service, Inc. shall notify the clerk of court for the Ninth Circuit of my  
9 indicative ruling that the motion raises substantial issues regarding the reinstatement of Joseph  
10 Servin only.

11 DATED this 19th day of April, 2018.

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15 ANDREW P. GORDON  
16 UNITED STATES DISTRICT JUDGE  
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